

Decree shall constitute an admission of any fact or of any liability or a waiver of any right, except as expressly stated herein.

86. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. CCH is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that CCH's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or applicable State law.

87. The Supplemental Complaint and this Consent Decree shall constitute and establish diligent prosecution by the United States and the State of Hawaii, under CWA section 505(b)(1)(B), 33 U.S.C. § 1365(b)(1)(B), and any other applicable federal or State law, of all matters alleged in the Supplemental Complaint arising from the beginning of the applicable statutes of limitation through the date of lodging of the Decree.

88. This Consent Decree does not limit or affect the rights of Defendant or of the Governments against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree against CCH, except as otherwise provided by law.

89. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

90. Nothing in this Consent Decree shall limit CCH's ability to modify its program for the design, planning, construction, operation, and maintenance of its Wastewater Collection System or Wastewater Treatment Plants in any fashion not inconsistent with this Decree.

XV. COSTS

91. The Parties shall bear their own costs of this action, including attorneys' fees, except that: (i) the United States and the State shall be entitled to

collect the costs (including attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by CCH; and (ii) Intervenor's claims for attorneys' fees and costs in this action, in Sierra Club, et al. v. City and County of Honolulu, Civ. No. 04-00463 DAE-KSC, and in United States, et al. v. City and County of Honolulu, Civ. No. 07-00235 DAE-KSC, will be resolved by Magistrate Judge Kevin Chang after the lodging of the 2010 Consent Decree in United States, et al. v. City and County of Honolulu, Civ. No. 94-00765 DAE-KSC, in accordance with applicable principles of law, provided that Intervenor bring a motion for such fees and costs within the time and otherwise in accordance with Local Rule 54.3. This Court's disposition of any such motion for attorneys' fees and costs shall be final and without any right of appeal.

XVI. NOTICES

92. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by certified mail, return receipt requested, or deposited with an overnight mail/delivery service, and addressed as follows:

To EPA:

Chief, Clean Water Act Compliance Office (WTR-7)
Water Division
Attn: Greg Arthur
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

To the United States:

Chief, Clean Water Act Compliance Office (WTR-7)
Water Division
Attn: Greg Arthur
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Chief, Environmental Enforcement Section
Attn: Robert Mullaney
U.S. Department of Justice
301 Howard Street, Suite 1050

San Francisco, CA 94105
Re: DOJ No. 90-5-1-1-3825/1

To State of Hawaii or DOH:

Edward G. Bohlen
Deputy Attorney General
Department of the Attorney General, State of Hawaii
465 South King Street, Room 200
Honolulu, HI 96813

Hawaii Department of Health
Clean Water Branch
Attn: Enforcement Section Supervisor
919 Ala Moana Boulevard, Room 301
Honolulu, HI 96814

To CCH:

Carrie K.S. Okinaga, Esq.
Corporation Counsel
Dept. of the Corporation Counsel
City and County of Honolulu
530 South King Street, Room 10
Honolulu, HI 96813

and

Timothy E. Steinberger
Director
Department of Environmental Services
City and County of Honolulu
530 South King Street, Room 10
Honolulu, HI 96813

and

James J. Dragna, Esq.
Bingham McCutchen LLP
355 South Grand Avenue, Suite 4400
Los Angeles, CA 90071

To Intervenors:

Any notifications, submissions, or communications to the Intervenors pursuant to this Consent Decree shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

Robert Harris
Director, Sierra Club, Hawaii Chapter
1040 Richards Street, Room 306
Mail: P.O. Box 2577

Honolulu, HI 96803
E-mail: robertharris@mac.com

Donna Wong
Hawaii's Thousand Friends
305 Hahani Street PMB 282
Kailua, HI 96734
E-mail: htf@lava.net

Christopher A. Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
E-mail: csproul@enviroadvocates.com

William Tam
Alston Hunt Floyd & Ing
American Savings Bank Tower, 18th Floor
1001 Bishop Street
Honolulu, HI 96813-3689
E-mail: wtam@ahfi.com

Mike Costa
Our Children's Earth Foundation
3701 Sacramento St. #194
San Francisco, CA 94118
E-mail: mike@ocefoundation.org

93. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above. Any Party may designate electronic mail address(es) as an alternative means for receiving submittals provided for by Paragraph 92. If a Party has designated an electronic mail address for receipt of submittals, delivery to the designated address shall substitute for the means of transmitting submissions provided for by Paragraph 92; provided, however, if an electronic mail submission is not successfully delivered to a designated electronic mail address, the Party making the submission shall make the submission as provided for by Paragraph 92 unless an alternative means of transmission is agreed upon.

94. Notices submitted in accordance with this Section shall be deemed submitted on the date they are postmarked or, if sent electronically, they shall be deemed submitted upon transmission, but a notice is not effective if the sending Party learns that it did not reach the Party to be notified. Notwithstanding the sender's receipt of a successful delivery notification, a recipient that fails to receive

the submission may request delivery by other means. Such a request does not affect the timeliness of the original submission.

XVII. EFFECTIVE DATE

95. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVIII. RETENTION OF JURISDICTION

96. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of resolving disputes arising under this Consent Decree pursuant to Section XII (Dispute Resolution), entering orders modifying this Consent Decree pursuant to Section XIX (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

XIX. MODIFICATION

97. The terms of this Consent Decree, including compliance schedules, may be modified, as provided in this Paragraph, by a subsequent written agreement signed by the United States, the State, and CCH. Time extensions and modifications to proposed project scopes shall not be construed as material modifications to this Consent Decree. Any non-material modifications to the Consent Decree may be made, without Court approval, by a written agreement signed by the United States, the State, and CCH, and shall be effective upon service to all the Parties; provided, however, the Intervenors may raise the issue of the materiality of the modification by invoking dispute resolution pursuant to Section XII (Dispute Resolution) of this Decree. When a modification constitutes a material modification to any term of this Consent Decree, the United States, the State, and CCH shall file a joint motion to modify the Consent Decree with the Court and shall provide notice to all Parties. The Intervenors may oppose a motion for material modification by filing with the Court and serving on all Parties a statement of position regarding any material modification. The Court shall apply the standard set forth in Paragraph 73 in deciding the dispute. Any material modification of this Consent Decree shall be effective upon approval by the Court.

XX. TERMINATION

98. This Consent Decree shall terminate as provided in this Section.

99. Section VI (Compliance Requirements: Wastewater Collection System) of this Decree shall terminate as provided in this Paragraph.

a. Nine and One-Half Year Report. Six months before the end of Year Ten, CCH shall submit to the Governments a report (the “Nine and One-Half Year Report”) that certifies the following:

i. that CCH has met the interim compliance milestones in Paragraph 11.c. (Force Main Spill Contingency Planning), and obtained approval of the spill contingency plans required therein;

ii. that CCH has completed work required in the follow-up action plans to be completed by no later than June 30, 2020, as required by Paragraph 12;

iii. that CCH has Completed Construction of the Force Main Projects required by Paragraphs 13.d., 14.a, 15.a., 16, and 17.a.;

iv. that CCH is maintaining backup force mains in good operating condition as required by Paragraphs 14.b, 15. b., 16, and 17.b.;

v. that CCH has Completed Construction of the 1999 Final Sewer I/I Plan projects required to be constructed by June 30, 2020, pursuant to Paragraph 18;

vi. that CCH has incorporated into its Capital Improvement Plan the projects that CCH had determined appropriate to program as a result of analysis or development pursuant to the Wet Weather I/I Assessment Update in Paragraph 18.g.x.;

vii. that CCH has inspected and assessed the number of miles of gravity sewers required pursuant to Paragraph 19;

viii. that CCH has repaired, rehabilitated or replaced the number of miles of gravity sewers required pursuant to Paragraph 20; and

ix. whether there are any outstanding stipulated penalty

assessments or pending dispute resolution proceedings with regard to CCH's Wastewater Collection System pursuant to the Consent Decree.

x. If any of requirements in subparagraphs i. through viii. have not been completed, the Nine and One-Half Year Report shall discuss CCH's plans to complete them by the end of Year Ten.

b. Ten Year Report. Within 60 Days after the end of Year Ten, CCH shall submit to the Governments a report (the "Ten Year Report") certifying that:

i. CCH has completed 650 miles of CCTV inspections as required by Paragraph 19;

ii. CCH has Completed Construction of 144 miles of projects as required by Paragraph 20;

iii. CCH has completed all projects identified by CCH in its Nine and One-Half Year Report pursuant to subparagraph a.x. above; and

iv. there are no outstanding stipulated penalty assessments or pending dispute resolution proceedings with regard to CCH's Wastewater Collection System pursuant to the Consent Decree.

c. The Governments shall use best efforts to approve or reject the Nine and One-Half Year Report and the Ten Year Report within 100 Days after they receive the reports. If the Governments approve CCH's certification that all of the requirements set forth in subparagraphs a.i. through viii. and subparagraphs b.i. through iv. are satisfied, then Section VI (Compliance Requirements: Wastewater Collection System) of this Decree shall terminate in its entirety. If the Governments approve CCH's certification that any requirement set forth in subparagraphs a.i. through viii. and subparagraphs b.i. through iv. is satisfied, then CCH's obligation to perform that requirement under this Consent Decree is terminated. If the Governments reject, in whole or in part, the Nine and One-Half Year Report or Ten Year Report, they shall specify the grounds upon which the rejection is based. If the Governments reject the Nine and One-Half Year Report

or Ten Year Report in whole or part, reject one or more certifications in the reports or do not respond within the 100-Day period, CCH may move the Court for approval of any certification in the Nine and One-Half Year Report or Ten Year Report that was not approved by the Governments. If CCH moves the Court, the standards set forth in Paragraph 72 shall apply. If the Court approves CCH's certification that all of the requirements set forth in subparagraphs a.i. through viii. and subparagraphs b.i. through iv. are complete, then Section VI (Compliance Requirements: Wastewater Collection System) of this Decree shall terminate in its entirety. If the Court approves CCH's certification that any of the requirements set forth in subparagraphs a.i. through viii. and subparagraphs b.i. through iv. are satisfied, then CCH's obligation to perform that requirement under this Consent Decree is terminated.

100. Section VII (Compliance Requirements: Wastewater Treatment Plants) of this Decree shall terminate as provided in this Paragraph.

a. After CCH has Completed Construction of secondary upgrades at either the Honouliuli or Sand Island Treatment Plant in accordance with the requirements of Section VII (Compliance Requirements: Wastewater Treatment Plants) of this Decree and achieved compliance for twelve consecutive months with the secondary treatment effluent quality requirements of 40 C.F.R. § 133.102 at that Treatment Plant, CCH shall submit to the Governments a Report of Completion, stating that CCH has satisfied those requirements as to that Treatment Plant, together with all necessary supporting documentation.

b. The Governments shall use best efforts to approve or reject the Report of Completion within 90 Days after they receive it. If the Governments approve CCH's Report of Completion, all obligations of this Consent Decree as to the Treatment Plant that is the subject of the Report shall terminate. If the Governments reject, in whole or in part, the Report of Completion, they shall specify the grounds upon which the rejection is based. If the Governments reject the Report in whole or in part, or do not respond within the 90-Day period, CCH

may move the Court for approval of the Report. If CCH moves the Court, the standard set forth in Paragraph 72 shall apply. If the Court approves the Report, all obligations of this Consent Decree as to the Treatment Plant that is the subject of the Report shall terminate.

101. After the certifications submitted by CCH pursuant to Paragraph 99 and the Reports submitted pursuant to Paragraph 100 have been approved by either: (i) the Governments or (ii) the Court, CCH may submit a Request for Termination to the Parties. After receipt of the Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether CCH has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State and the Intervenors, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

102. If the United States, after consultation with the State and the Intervenors, does not agree that this Consent Decree may be terminated, CCH may invoke Dispute Resolution under Section XII of this Decree. However, CCH shall not seek Dispute Resolution under Section XII of any dispute regarding termination until 60 Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

103. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. CCH shall also publish notice of the lodging and comment period, in a form approved by DOH and in a major Honolulu newspaper(s) as approved by DOH. CCH shall provide DOH with an affidavit indicating when and where the notice was published. The United States and the State reserve the right to withdraw or withhold consent if comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. CCH and the Intervenors consent to entry of this Consent

Decree without further notice.

XXII. SIGNATORIES/SERVICE

104. Each undersigned representative of CCH, the State, the Intervenors, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

105. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

106. Intervenors and CCH agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States notifies CCH in writing that it no longer supports entry of this Consent Decree.

XXIII. INTEGRATION

107. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and this Consent Decree supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted pursuant to this Consent Decree, no other document and no other representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

XXIV. APPENDICES

108. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the Small Force Mains List;

“Appendix B” is the Large Force Mains List;

“Appendix C” is the Site-Specific Spill Contingency Plan;

“Appendix D” is the Force Main Condition Assessment;
“Appendix E” is the Force Main Operation and Maintenance Program;
“Appendix F” is the Scope of the 1999 Final Sewer I/I Plan Projects;
“Appendix G” is the List of Deferred Projects from the Wet Weather I/I Assessment Update;
“Appendix H” is the Gravity Main Rehabilitation and Replacement Projects for Years One through Three;
“Appendix I” is the List of Currently Authorized Positions for CCH’s Staffing Commitment;
“Appendix J” is the Equipment Inventory, and
“Appendix K” contains provisions of HAR Chapter 11-62 (as amended on April 15, 1997).

XXV. FINAL JUDGMENT

109. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court between and among the United States, the State, Intervenor, and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this _____ day of _____, 2010.

DAVID A. EZRA
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City and County of Honolulu.

For Plaintiff the United States of America:

Dated: _____

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, DC 20530

Dated: _____

ROBERT D. MULLANEY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Tel: (415) 744-6491
Fax: (415) 744-6476

For Plaintiff the United States of America (con't):

Dated: _____

JARED BLUMENFELD
Regional Administrator
U.S. Environmental Protection Agency
Region 9

Of Counsel:

HUGH BARROLL
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9

For Plaintiff the United States of America (con't):

Dated: _____

CYNTHIA J. GILES
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City and County of Honolulu.

For Plaintiff the State of Hawaii:

Dated: _____

EDWARD G. BOHLEN
KATHLEEN S.Y. HO
Deputy Attorneys General
Department of the Attorney General,
State of Hawaii
465 South King Street, Room 200
Honolulu, Hawaii 96813
Tel: (808) 587-3050
Fax: (808) 587-3077

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City and County of Honolulu.

For Defendant the City and County of Honolulu:

Dated: _____

MAYOR, MUFI HANNEMANN

APPROVED:

APPROVED:

TIMOTHY E. STEINBERGER Date
Director
Department of Environmental Services

CRAIG I. NISHIMURA Date
Director
Department of Design and
Construction

APPROVED:

APPROVED:

RIX MAURER III Date
Director
Department of Budget & Fiscal Services

JEOFFREY S. CUDIAMAT Date
Director
Department of Facility Maintenance

APPROVED:

NOEL ONO Date
Director
Department of Human Resources

APPROVED AS TO FORM AND LEGALITY:

CARRIE K.S. OKINAGA Date
Corporation Counsel

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City and County of Honolulu.

For Intervenors Sierra Club, Hawai'i Chapter, Hawai'i's Thousand Friends, and Our Children's Earth Foundation

Dated: _____

CHRISTOPHER A. SPROUL
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
Tel: (415) 533-3376
Fax: (415) 358-5695

Dated: _____

WILLIAM TAM
Alston Hunt Floyd & Ing
American Savings Bank Tower,
18th Floor
1001 Bishop Street
Honolulu, Hawaii 96813-3689
Tel: (808) 524-1800
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